IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7603 OF 2006

Ambika Dinkar Ghadage .. Petitioner.

vs.

Sampat Hanmant Ghadage

& Ors. . .. Respondents.

Mr. V. Y. Jadhav for petitioner.

CORAM : A.P. DESHPANDE, J.

DATE : 21st November, 2006.

P.C.

. The plaintiff instituted a suit for declaration of his ownership over the suit way and for cancellation of the sale deed executed by Dattatraya in favour of Ambika and Sahebrao. In the said suit, a temporary injunction application was moved as the plaintiff was apprehending interference with the approach way to his field. It is the case of the present petitioner that in all fairness he gave an undertaking at Exhibit-50 that during the pendency of the suit the petitioner will not obstruct the plaintiff from using the approach way. The First Appellate Court has instead of accepting the said undertaking and by passing an order on

temporary injunction has held that the plaintiff has a legal right to seek appropriate order from the Court and the undertaking by itself do not serve the purpose. The First Appellate Court has prima facie found legal right of the plaintiff to be flowing from the oral partition and thus has granted temporary injunction.

2. The learned counsel for the petitioner says that under the garb of the interim order the plaintiff may obstruct the present petitioner from cultivating his own land. Perusal of the order passed by the trial Court clearly reveals that the petitioner has been restrained from causing obstruction or interference to the suit way as mentioned in the plaint map and it does not relate to any other property. In this view of the matter, no interference is called for.

3. Having regard to the controversy, I hope and trust that the trial Court will decide the suit as expeditiously as possible.

(A.P. Deshpande, J.)